IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/07/2003

CORAM

THE Honorable MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.1177 OF 2002

Chandran @ Muthiah .. Appellant

-Vs-

State
rep. by Inspector of Police
Tirunelveli Town Police Station
Tirunelveli .. Respondent

This criminal appeal is preferred under Section 374 Cr.P.C. against the judgment dated 12.6.2002 made in S.C.No.322 of 1999 on the file of the learned First Additional Sessions Court, Tirunelveli.

!For Appellant : Mr.K.Govi Ganesan

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. side)

:JUDGMENT

The sole accused/appellant herein, who stood charged, tried, found guilty under Sections 304(B) and 498(A) and sentenced to undergo 7 years R.I. under Section 304(B), while no separate sentence was awarded under Section 498(A) I.P.C., has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

a) P.W.1, Petchiammal is the mother of deceased Poongothai aged about 28 years. The said Poongothai was given in marriage to the appellant/accused 5 years and 7 months prior to the date of occurrence, namely, 14.6.1998. At the time of marriage, 10 sovereigns of gold jewels and Rs.10000/- cash were given to A1 as dowry. After the marriage was over, the accused/appellant herein demanded money from the deceased as dowry on the instigation of his mother and sister, who were originally shown as other two accused. During the committal proceedings, the mother and sister of appellant herein died. On several occasions, P.w.1 gave money to the deceased. Finally, the accused demanded Rs.10000/- from the deceased. When this demand was not met, the accused indulged in quarreling with the deceased. The deceased could not tolerate the cruelty exerted on her, and hence, she was driven to commit suicide by self immolation at about 7.00 a.m. on 14.6.1998 at A1's house.

b) At about 8.10 a.m. she was brought to Government Medical College Hospital at Tirunelveli, wherein she was admitted by P.W.4 Dr. Jeyaram. P.W.4 medically examined the deceased and gave intimation Ex.P.1 to Police station. Ex.P.2 was the accident register with regard to the injuries found on the body of the deceased. On intimation, P.W.14, Murali Sundaram, Judicial Magistrate-6, Tirunelveli came to the hospital and recorded Dying Declaration of the deceased at about 10.00 a.m. in the presence of Doctor and the same was marked as Ex.P.13. P.W.9 , Rajasingh, Head Constable attached to Tirunelveli Government Medical College Hospital outpost police station, on receipt of Ex.P.1 intimation, proceeded to F.S.Ward on 14.6.1998 and recorded the statement of the deceased, which was marked as Ex.P.6. He forwarded the same to Tirunelveli Town Police Station where P.W.11 Kandasamy, Head Constable on receipt of Ex.P.1 and Ex.P.6 registered a case in Crime No.453/98 under Section 498(A) I.P.C. Printed F.I.R. Ex.P.10 was despatched to the concerned court, while the copies were sent to higher officials.

c) P.W.13, Purushothaman, Deputy Superintendent of Police took up investigation on 16.6.1998, proceeded to the site of occurrence at about 9.30 a.m. and prepared Ex.P.5 Observation Mahazar in the presence of witnesses and Ex.P.11 rough sketch. He examined P.Ws.1,2,3,6,7 and 9 and recorded their statements. Then P.W.13 proceeded to the hospital, examined the deceased and recorded her statement. On 26.6.1998 on receipt of death intimation from the hospital, he altered the Section from 498(A) to 498(A), 304(B) I.P.C. Altered F.I.R. under Ex.P.12 was sent to concerned Judicial Magistrate Court. P.W.13 made a request to P.W.10, Rajamani, Revenue Divisional Officer to conduct enquiry as to the cause of death. P.W.10, R.D.O. proceeded to the hospital and conducted inquest on the body of the deceased in the presence of panchayatars and witnesses. P.W.10 examined witnesses and recorded their statements. On requisition made by P.W.10, P.W.5 Dr.Selvaraj conducted autopsy on the dead body of Poongothai on 27.6.1998 at about 9.45 a.m. He issued post-mortem certificate under Ex.P.3 and Viscera report under Ex.P.4.

d) On 26.6.1998, P.W.13 took up further investigation. He examined the witnesses and recorded their statements. On 27.6.1998, P.W.13 arrested A1 to A3 and sent them for remand. On 10.1.1998, P.W.13 examined P.W.5 Doctor, who conducted post-mortem and other witnesses and recorded their statements. On completion of investigation, he filed a charge sheet against the accused on 7.12.1998 under Sections 304(B) and 498(A) I.P.C. During pendency of proceedings in the committal court, A2 and A3 died.

3. In order to prove its case, the prosecution has examined 14 witnesses and marked 13 exhibits. No M.Os. were marked. After completion of evidence of prosecution, the accused was question under Section 31 3 of Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witness, which he flatly denied as false. No defence witnesses were examined. After consideration of the rival submissions and scrutiny of the materials available, the trial Court found the accused guilty under Section 498(A) and 304(B) I.P.C. and sentenced to undergo 7 years R.I. under Section 304(B), while no separate sentence was awarded on the accused under Section 498(A).

4. Advancing his arguments on behalf of the appellant, the learned counsel inter-alia raised following submissions:

The prosecution has neither proved the ingredients of Section 498(A) nor 304(B) I.P.C. The prosecution has not examined one Mariammal @ Mari, who

had first reported the occurrence to P.W.1. It remains to be stated that the victim, who was admitted with burn injuries, was treated by P.W.4, Doctor and she has stated before P.W.4 that she was constrained to cause self immolation, since she was deserted by her husband and the same has also been recorded in Ex.P.2, Accident Register. Hence, in view of the statement made by the victim, it would be quite evident that there was neither cruelty nor dowry harassment, which according to the prosecution was the reason for commission of suicide. All the witnesses examined by the prosecution are highly interested. There is no iota of evidence to show that there was any dowry demand. There was no such incident that had taken place soon before the incident. Hence, in view of the same, the judgment of the lower court has got to be set aside.

5. The learned Government Advocate in his sincere attempt to sustain the judgment of the trial court made following submissions:

The prosecution has examined P.W.1, the mother of the deceased, who has categorically spoken about the demand made by the accused then and there at the instigation of his mother and sister, who were originally arrayed as A2 and A3. The prosecution has also examined P.W.7, an independent witness, who has clearly spoken about the fact that often, the deceased was driven away from her husband's house and she had to be with her mother on number of occasions, since she could not meet the dowry demand made by the accused. From the evidence of P.W.1, it would be abundantly clear that finally there was a demand of Rs.100 00/- as dowry and when the same was informed by the deceased to P.W.1 , she could not meet the same. When the accused came to know about the same, he tortured the deceased, which led her to commit suicide by self immolation. When the burning injuries were so extensive, on intimation by P.W.4 Doctor, P.W.14, the Judicial Magistrate, No.6, Tirunelveli came to the hospital and recorded Dying Declaration of the deceased in the presence of Doctor. There was evidence to show that she was conscious at the time of making Dying Declaration and she was survived for number of days thereafter. In the course of Dying Declaration, she has thoroughly narrated that she was tortured by her husband when she could not meet the demand of Rs.10000/-, and hence, she committed suicide. This part of Dying Declaration is a strong piece of evidence to the prosecution case. P.w.10 R.D.O has also conducted enquiry and has given a report under Ex.P.9 stating that it was the death due to dowry harassment. Thus, the prosecution has proved its case beyond reasonable doubt. Hence, the judgment of the lower court has got to be affirmed.

6. This Court paid its full attention on the rival submissions made and made a close scrutiny on the materials available. Admittedly, the deceased, Poongothai, was given in marriage to the accused/ appellant 5 years and 7 months prior to the date of occurrence, namely, 14.6.1 998. On the date of occurrence, she poured kerosene on her and set fire herself. P.W.1 has categorically deposed that at the time of marriage 10 sovereigns of gold jewels and Rs.10000/- cash were given to her. The accused sold away all the gold jewels given by the victim. The marital life of victim was sorrowful, since the accused along with A2 and A3 exerted cruelty on her and were torturing her by making demands of dowry then and there. It is quite evident from the testimony of P.W.1 that on several occasions, the deceased came to her house demanding money. On the last occasion, there was a demand for Rs.10 000/-, which P.W.1 could not meet. There is no reason to disbelieve the

evidence of P.W.1, who was aged about 75 years. The appellant is unable to show any circumstance why her evidence has got to be disbelieved or rejected.
7. From the testimony of P.W.7, an independent witness, it would be clear that the accused was in the habit of sending his wife to the parental home making demand for money. On the date of occurrence, namely, 14.6.1998, immediately on her attempt to commit suicide by self immolation, she was taken to Government Medical College Hospital, Tirunelveli with extensive burning injuries. P.W.4 Doctor medically examined her. In Ex.P.2 Accident Register, the Doctor has clearly narrated the burning injuries. The victim Poongothai, who was admitted in the said hospital with burn injuries, succumbed to the same on 26.6.19 98. Thus, it cannot be disputed that she has committed suicide by self immolation. Immediately after the admission before the hospital, in view of her condition so serious, P.W.4 Doctor has informed the same to P.W.14, Judicial Magistrate for recording Dying Declaration. P.W.14 has proceeded to the hospital and recorded Dying Declaration of the victim, which was marked as Ex.P.13. From the evidence of P.W.14, it would be clear that he followed the proc edural formalities and after ascertaining that the victim was conscious, he has recorded the statement. No infirmity is noticed in the proceedings of the Judicial Magistrate in recording Dying Declaration of the victim under Ex.P.13, which runs as follows:

(",d;W (14.6.98) fhiy 7 kzpf;F ehd; iryg;g bjUtpy; jdpahf FoapUf;Fk; tPl;oy; vd; khkpahh; Kd;dpiyapy; kz;bzz;bza; Cw;wpf; bfhz;L jP itj; Jf; bfhz;nld;. vd; khkpahh; vd;Dld; mof;fo rz;il nghLthh;. vd; fzth; vd;id ghh;f;f tUtjpy;iy. vd; fzth; vd;id mof;fo mog;ghh;. vd; fzth; vdf;F rhg;ghl;Lf;F bfhLg;gjpy;iy. ,e;j bfhLik jhq;f Koahky; ,d;W jP itj;Jf; bfhz;nld;. vd; fzth; vd; khkpahhpd; J[[}z;Ljy; nghpy; U.10>000/- nfl;lhh;. vq;fshy; bfhLf;fKoatpy;iy. kfsph; fhty; epiyaj;jpYk; g[fhh; bfhLj;njd;. mjw;F gpd;dh; bfhLik mjpfkhfptpl;lJ.")

A very reading of Dying Declaration given by the victim would clearly indicate that she could not meet the demands made by her husband at the instigation of his mother and sister, and hence, she committed suicide. As rightly pointed out by the learned Government Advocate, this is the strongest piece of evidence available for the prosecution to point to the guilt of the accused.
8. P.W.10 R.D.O on receipt of F.I.R. has proceeded to the Government Medical College Hospital and conducted inquest in the presence of the witnesses and has given a report under Ex.P.9. In his report, he has clearly stated that it was a dowry death. It is pertinent to point out that the victim has committed suicide in the house of A1. At this juncture, it remains to be stated that what was contended by the defence before the trial court was that when the victim was cooking, the kerosene stove burst, and thus, she had burn injuries. No material was recovered from the site of occurrence to prove the said theory as put forth by the defence. In the absence of any material, the trial court was perfectly correct in rejecting the defence theory. All the above would clearly go to show that there was dowry harassment within 7 years from the time of marriage and that the victim, who could not meet the same, has taken a decision to commit suicide, and hence, the trial court was perfectly correct in finding the accused guilty under Section 304(B) and 498(A) I.P.C. The trial court has not given any separate sentence under Section 498(A) I.P.C. But, the trial court has awarded sentence of 7 years

R.I. under Section 304(B) I.P.C., which is the minimum punishment available under the said provision. This Court is of the view that there is nothing to interfere either in the conviction or in the sentence imposed by the trial court on the accused/appellant.

9. In the result, this criminal appeal fails and the same is dismissed.

11.07.2003
Index : Yes
Internet : Yes
vvk

To

1. The First Addl. Sessions Judge, Tiunelveli
2. The First Addl. Sessions Judge, Tiunelveli
through the Principal District and Sessions Judge,
Tirunelveli
3. The Superintendent, Central Prison, Palayamkottai
4. The Public Prosecutor, High Court, Madras
5. Mr.V.Jaya Prakash Narayan, Govt. Advocate(Crl. Side)
High Court, Madras
6. The Dy. Inspector General of Police, Chennai-4
7. The Inspector of police, Tirunelveli Town Police Station
Tirunelveli